IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/86064/2016

[Arising out of Order-in-Original No: 51/ST/COMMR/2015 dated 31st December 2015 passed by the Commissioner of Customs & Central Excise, Aurangabad.]

Shivraj Raghunath Motegaonkar …***Appellant***

versus

Commissioner of Central Excise, Customs & Service Tax
Aurangabad …***Respondent***

<u>*Appearance*</u>*:*

Ms. Puloma Dalal, Advocate for appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**10/11/2017**
Date of decision:	**10/11/2017**

<u>ORDER NO: A/92253/2017</u>

Appellant, M/s Shivraj Raghunath Motegaonkar, registered as provider of 'commercial training and coaching service,' filed declarations on 20th August 2013 under the Voluntary Compliance Encouragement Scheme, 2013 for the period from 1st April, 2010 to 31st December, 2012 declaring tax dues of ₹ 10,59,183/-. The declaration was rejected on the ground that the tax dues as admitted by them before other statutory agencies for the period was ₹ 15,64,823/- arising from additional income of ₹ 45,01,130/- reported for 2009-10 and income of ₹ 4,08,000/- from renting of immovable property for the period from 2009-10 to 2011-12. Accordingly, differential tax of ₹ 15,64,823/- was confirmed, along with interest thereon, and penalty imposed under section 78 of Finance Act, 1994. Aggrieved by the order of Commissioner of Central Excise, Customs and Service Tax, Aurangabad, in order-in-original no. 51/ST/COMMR/2015 dated 31st December 2015, the appellant has approached the Tribunal.

2. Appellant contends that the denial of declaration owing to proceedings initiated against them following a search conducted in November 2013 is not consistent with the statute as their declarations had been filed in August 2013 and that the reliance placed by the adjudicating authority on the declarations of ₹ 45,01,130/- before the income tax authority did not suffice to establish that the amounts were consideration for 'commercial training and coaching service' or any other taxable activity. The tax liability on renting of property has been erroneously computed under section 65(105)(zzzz) despite specific exclusion. Reliance has been placed on the decisions of the Hon'ble High Court of Bombay in *Pace Setter Business Solutions v. Union of India [2017 (52) STR 11 (Bom)]* and *Indokem Ltd v. Union of India [2015 (38) STR 464 (Bom.)]* to plead that it was not open to

the original authority to reject the claim for coverage under Voluntary Compliance Encouragement Scheme to the extent that taxes had been declared unless with proper justification. Reliance is also placed in the circular No. 174/9/2013-ST dated 25th September 2013 of Central Board of Excise and Customs wherein it has been clarified that

'*Subject : The Service Tax Voluntary Compliance Encouragement Scheme - Regarding.*

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2	*An apprehension was raised that declarations are being considered for rejection under section 106(2) of the Finance Act, 2013, even though the "tax dues" pertain to an issue or a period which is different from the issue or the period for which inquiry/ investigation or audit was pending as on 1-3-2013.*	*Section 106(2) prescribes four conditions that would lead to rejection of declaration, namely,* *(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of,-* *(i) search of premises under section 82 of the Finance Act, 1994; or* *(ii) issuance of summons under section 14 of the Central Excise Act, 1944; or* *(iii) requiring production of accounts, documents or other evidence under the Finance Act, 1994 or the rules made thereunder; or*

			(b) an audit has been initiated, *and such inquiry, investigation or audit was pending as on the 1st day of March, 2013.* *These conditions may be construed strictly and narrowly. The concerned Commissioner may ensure that no declaration is rejected on frivolous grounds or by taking a wider interpretation of the conditions enumerated in section 106(2). If the issue or the period of inquiry, investigation or audit is identifiable from summons or any other document, the declaration in respect of such period or issue alone will be liable for rejection under the said provision.* *Examples :* *(1) If an inquiry, investigation or audit, pending as on 1-3-2013 was being carried out for the period from 2008-2011, benefit of VCES would be eligible in respect of 'tax dues' for the year 2012, i.e., period not covered by the inquiry, investigation or audit.*
			(2) If an inquiry or

		investigation, pending as on 1-3-2013 was in respect of a specific issue, say renting of immovable property, benefit of VCES would be eligible in respect of 'tax dues' concerning any other issue in respect of which no inquiry or investigation was pending as on 1-3-2013. *It is also reiterated that the designated authority, if he has reasons to believe that the declaration is covered by section 106(2), shall give a notice of intention to reject the declaration within 30 days of the date of filing of the declaration stating such reasons to reject the declaration. Commissioners should ensure that this time line is followed scrupulously.*
3	*Whether benefit of VCES would be available in cases where documents like balance sheet, profit and loss account etc. are called for by department in the inquiries of roving nature, while quoting authority of section 14 of the Central Excise Act in a routine manner.*	*The designated authority/ Commissioner concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the inquiry is of roving nature or whether the provisions of section 106(2) are attracted in such cases.'*

3. Learned Authorised Representative placed reliance on the statement recorded by income tax authorities and Form no. 3CD filed under section 44AB of Income Tax Act, 1961 wherein it is stated that the appellant undertakes no activity other than tuition classes which would render any other additional income to be includible in the taxable value.

4. Having heard both sides, it is seen that the show cause notice was issued on 14th August 2014 whereas the declaration was filed on the 20th August 2013. The circular referred to by Learned Counsel prescribes a time-limit of thirty days from the date of filing of declaration for placing the declarant on notice that their declaration was liable to rejected. Having failed to initiate the action within the prescribed time-limit, the proceedings for rejection stand vitiated.

5. The Hon'ble High Court of Allahabad in *K Anand Caterers v. Union of India [2014 (33) STR 142 (All.)]* lays down the *prima facie* condition for fulfillment prescribed for eligibility to declare under the scheme and that further proceedings cannot be initiated without considering and deciding the application. The Tribunal in *Commissioner of Central Excise, Ludhiana v. Zoloto Industries [2013 (294) LET 455 (Tri. Del.)* and in *Commissioner of Central Excise, Ludhiana v. Deluxe Enterprises [2011 (22) STR 203 (Tri. Del.)]* and the Hon'ble High Court of Punjab and Haryana in *Commissioner of Central Excise, Ludhiana v. Mayfair Resorts [2011 (22) STR 263*

(P&H)] have held that mere reliance on statements of declarations furnished to the income tax authorities is not sufficient for determination of value of taxable service without proper scrutiny and specific finding.

6. In view of the above, the impugned order is set aside and appeal allowed.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

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